wise have easily done. Nothing was said or done by the defendant or any other person on her behalf from May 1966 until November 1967 to show the Bank that they were mistaken in thinking that the said title deeds had been deposited with them as security for Dwidaya Trading Company's account. It was not until November 2, 1967 that the defendant swore an affidavit which was filed in Suit No. 1809 of 1967 in which she made certain allegations about the manner in which she had been induced to sign the Confirmation of deposit of title deeds. Before November 2, 1967 the position was that there were in existence the two orders of court and the concluded agreement between the Bank and the defendant whereby the Bank were precluded from selling 28, Cuscaden Road until the property at Thomson Rise and the defendant's shares were sold and there was a failure to pay the monthly instalments which were to be determined. Until November 2, 1967 the representation made by the defendant to the Bank was that the two orders of court were valid and made with her consent.

In the circumstances of this case I am of the opinion, as I have already stated, that the defendant is estopped or in equity precluded from relying on the allegations to which I have earlier referred.

Of the witnesses in this case I found Mr. Tann Wee Tiong, Mr. Selvadurai, Mr. Loke, Mr. Djeng, Mr. Low Sim Chan and Mr. Ng Ling Cheow to be honest in all that they said. Mr. Loke and Mr. Djeng both had a lapse of memory when they said that Yo was present at the time the letter of guarantee dated January 27, 1965 was signed by the defendant. Mr. Loke also forgot what Yo told him about the proposed overdraft and what he himself told Mr. Djeng. However, these two matters do not, in my view, affect the honesty of Mr. Loke and Mr. Djeng. The fact that they were dismissed by the Bank in August 1965 is not a reflection on their character. As for the defendant and Yo, they were both prepared to tell lies whenever it suited them to do so and each of them did tell a number of lies. Subject to what I have said concerning lapses of memory on the part of Mr. Lok and Mr. Mr. Djeng, wherever the testimony of the defendant and Yo differs from or runs contrary to the evidence of the witnesses whom I have just named I accept the evidence of these witnesses.

In my judgment in Suit No. 1809 of 1967, the Bank succeed in their claim under the letter of guarantee dated January 12, 1962 for $200,000 with interest and the letter of guarantee dated January 27, 1965 for $600,000 with interest. There will accordingly be judgment for the Bank for the sum of $800,000 with interest and costs while the defendant's counterclaim is dismissed with costs. The question of interest is referred to the Registrar for ascertainment. The defendant's claim in Suit No. 1909 of 1967 is dismissed with costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Hilborne & Co.*

MARIA CHIA SOOK LAN v. BANK OF CHINA

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) February 19 to 22, 1973]

[Singapore — Civil Appeals Nos. 36 and 37 of 1972]

Banking — Guarantee — Allegation of misrepresentation, undue influence and duress.

Practice and Procedure — Consent order — Agreement between solicitors.

Registration of Deeds — Confirmation of deposit of title deeds — Failure to register — Whether mortgage unenforceable — Evidence Act (Cap. 5), s. 91 and Registration of Deeds Ordinance (Cap. 255), s. 4.

This was an appeal from the decision of Tan Ah Tah J., reported *ante* p. 41. The appellant, *C*, was a customer of the respondent, *B*, and alleged at the trial of the two actions, which were heard together and out of which these consolidated appeals arose, that two guarantees she gave *B* to secure the account of her husband, *Y*, with *B* were not enforceable against her, because one had been obtained by misrepresentation, and the other by undue influence and duress.

C further alleged at the trial that a confirmation in writing that the title deeds to her property at Cuscaden Road had been deposited with *B* to secure *Y's* indebtedness to *B* had been procured by *B's* fraudulent misrepresentation, duress and/or undue influence, and *C* also raised a plea of *non est factum*.

C further alleged that an agreement arrived at between her solicitors and *B's* solicitors, which was subsequently given effect to by two consent orders of court whereby property of *C* at Thomson Rise and *C's* shares would be sold before the land at Cuscaden Road, was not a concluded agreement, because a material term as to payment by instalments had been left open, and that the orders had no greater validity than the purported agreement on which they were based, that she never authorised her solicitors to come to such arrangement nor to consent to the orders, and that she was unaware that such orders were being made, and they should be set aside.

C further contended that the confirmation of deposit of the title deeds of her property at Cuscaden Road was inadmissible, and the mortgage unenforceable for non-registration under section 4 Registration of Deeds Ordinance, (Cap. 255) and that oral evidence of the intention to create an equitable security could not be given by reason of section 91, Evidence Act, (Cap. 5).

The learned trial judge found *C* and *Y* to be untruthful, accepted the evidence of *B's* witnesses and rejected *C's* allegations, and held that the confirmation of deposit of title deeds was admissible, even though not registered because it evidenced a pre-existing agreement that the title deeds to the Cuscaden Road property were deposited by way of security for *Y's* indebtedness to *B*.

Held: dismissing the appeals: (1) the learned trial judge had the advantage of hearing the witnesses and the issues were primarily questions of fact, the determination of which depended almost entirely on the credibility of *C* and her witnesses and of the solicitors who had acted from time to time for *C*, and there was no ground for reversing the learned trial judge's findings of fact (*Onassis & Anor.* v. *Vergottis*[1] applied);

(2) *C* had failed to discharge the burden on her of establishing undue influence, *non est factum* and misrepresentation;

(3) there was a concluded agreement between *B* and *C* through their respective solicitors notwithstanding that the amounts of the instalments were left open pending the sale of the Thomson Rise property, and the consent orders should not be set aside;

(4) it was unnecessary to deal with the allegation based on section 4 of the Registration of Deeds Ordinance in view of the consent order, but *(obiter)* in any event the court considered itself bound by *Kasmeerah* v. *Hadjee Mohamed Taib.*

Cases referred to:-

(1) *Onassis & Anor.* v. *Vergottis* [1968] 2 Ll. Rep. 421.

(2) *Williams* v. *Bayley* (1866) L.R. 1 H.L. 200.

(3) *Hontestroom (Owners)* v. *Sagaporack (Owners)* [1927] A.C. 37.

(4) *Wat or Thomas* v. *Thomas* [1947] A.C. 484.
(5) *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370.
(6) *Saunders* v. *Anglia Building Society* [1970] 3 All E.R. 961.
(7) *Huddersfield Banking Co. Ltd.* v. *Henry Lister & Sons Ltd.* [1895] 2 Ch. 273.
(8) *Kasmeerah* v. *Hadjee Mohamed Taib* (1904) 8 S.S.L.R. 113.

The following authorities were also cited in argument: *Samy Nathan Chetty* v. *Ramasamy Chetty* (1904) 8 S.S.L.R. 117; *Re M.D. Mistry* (1904) 8 S.S.L.R. 122; *Ho Hong Bank, Ltd.* v. *Teo Chin Chay* [1929] S.S.L.R. 195; *A.R.A.R.M. Ramanathan Chettiar* v. *Chua Tiang Seng* [1933] 2 M.L.J. 69; *F & G Sykes Wessex Ltd.* v. *Fine Fare Ltd.* [1967] 1 Ll. Rep. 53; *Allcard* v. *Skinner* (1887) 36 Ch. D. 145; *Williams* v. *Bayley* (1866) LR 1 H.L. 200; *Mutual Finance Ltd.* v. *J. Wetton* [1973] 2 K.B. 389; *Tufton* v. *Sperni* [1952] 2 T.L.R. 516; *Zamet* v. *Hyman* [1961] 1 W.L.R. 1442.

COURT OF APPEAL.

J. G. Le Quesne Q.C. and *K. E. Hilborne* for the appellant

A. P. Godwin and *Roy Sharma* for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an unusual case. In 1967, the Bank of China commenced an action in the High Court in Suit No. 1809 of 1967 against a married woman Maria Chia Sook Lan. About six weeks later, in Suit No. 1909 of 1967, Maria Chia Sook Lan (hereinafter referred to as "Madam Chia") sued the Bank of China (hereinafter referred to as "the Bank"). Both actions arose out of overdraft facilities extended over a period of years by the Bank to a sole proprietorship firm known as Dwidaya Trading Company owned by Madam Chia's husband Yo Kian Tjoan. Hereafter we shall refer to Dwidaya Trading Company as "the Company" and Yo Kian Tjoan as "Yo" or as "the husband".

These two actions were eventually heard by Tan Ah Tah J. in March 1972. At the commencement of the trial of the Bank's action, it was recorded by the trial judge that "it has been agreed that the evidence in Suit No. 1809/67 should be treated as evidence in Suit No. 1909/67". The trial lasted over three weeks and the trial judge, after taking time to consider, in a single judgment dealing with both actions gave judgment in favour of the Bank in it's action and dismissed Madam Chia's action. Hence the present appeals and we propose to deal with both appeals in a single judgment of the court.

It is convenient first, to state the facts. Madam Chia and her husband whom she married in 1942 are of Chinese origin and with their children came from Indonesia to Singapore in 1958 and have since lived here. Before 1958 she had made several trips to Singapore with her husband who was by 1956 a prosperous business man dealing in rubber. She did business during these visits to Singapore and made much money as a broker. While she was living in Indonesia she owned and ran a dress-making business and during the Japanese occupation she was a successful broker. Her father was a comparatively wealthy man and when his health was failing he remitted to her in Singapore in 1960 by way of gift large sums of money totalling about $440,000 which she deposited in the Chung Khiaw Bank. In 1961 she purchased a house now known as No. 28 Cuscaden Road, Singapore for $70,000 and her family has since lived in it.

Apparently, shortly after her arrival in Singapore in 1958 she speculated and invested in shares and in her own words "did well in 1960, 1961". She had overdraft facilities with her first bankers, Chung Khiaw Bank, against the security of her shares but when in late 1960 that bank pressed her for payment of her then overdraft she transferred her account to the Bank. She and her husband saw two sub-managers, Loke Chan Hing and Djeng Hsueh Heng (hereinafter referred to as "Loke" and "Djeng") in early November 1960 to open an account and to ask for overdraft facilities to be secured by a deposit of her shares. According to Loke she did not speak much English and conversed mostly in Mandarin and Malay whilst he spoke to her in English and Malay and Djeng spoke to her in Mandarin. A few days after this first meeting she and her husband Yo saw Loke again at the Bank's premises and Loke told her that the Bank was prepared to allow her to overdraw up to 50% of the value of her shares deposited with the Bank. She agreed and opened an account with $500 and on the same day drew out $40,000 against her shares.

On February 2, 1961 her husband Yo, at the invitation of Loke, also opened an account in the name of the Company without any prior arrangement for overdraft facilities and up to October 4, 1961 the Company's account was in credit. Just before October 4, 1961 Yo approached Loke requesting overdraft facilities for the Company's account saying he would furnish a Letter of Guarantee from his wife and would deposit the title deeds relating to 28 Cuscaden Road which belonged to his wife as security. Yo also said he wanted $100,000 against the letter of Guarantee and $100,000 against 28 Cuscaden Road. On October 2, 1961 Madam Chia and her husband Yo went to Loke's office and in the presence of Loke, Djeng and Yo, Madam Chia signed a Letter of Guarantee dated October 2, 1961 and a document described therein as "Confirmation of Deposit of Title Deeds" relating to 28 Cuscaden Road. Yo signed, in his capacity as sole proprietor of the Company, as witness to both these two documents. It is convenient hereafter to refer to the Letter of Guarantee dated October 2, 1961 as "P1" and the Confirmation of Deposit of Title Deeds relating to 28 Cuscaden Road as "P4".

Under "P1" Madam Chia guaranteed the Company's overdraft up to a limit of $100,000 and interest thereon. In "P4" it is stated

> "I ... Maria Chia Sook Lan ... hereby confirm the terms of my previous verbal agreement with you under which it was arranged that the title deeds relating to [28 Cuscaden Road] which were in your possession were to be held by you as security for the payment to you on demand of all moneys then owing or which should at any time thereafter be owing from [the Company] ... to [the Bank] ... including interest...."

Before October 2, 1961, the title deeds of 28 Cuscaden Road were in the possession of the Bank, having been sent to the Bank by Messrs. Allen & Gledhill who had acted as solicitors for Madam Chia in her purchase of this property. The title deeds were sent by Messrs. Allen & Gledhill on her instructions with a letter dated August 11, 1961 and the Bank acknowledged receipt of the title deeds on August 15, 1961. At the trial Madam Chia said that her own

overdraft was secured by her shares and her Cuscaden Road property. In the Statement of Claim in her action against the Bank it is pleaded (Paragraph 2) that she deposited the title deeds relating to her Cuscaden Road property on or about August 15, 1961 with the Bank as security for an overdraft on her personal account with the Bank. At the trial Loke said he did not arrange with Madam Chia or anybody else to send the title deeds to the Bank and he did not know why the title deeds were sent by Messrs. Allen & Gledhill to the Bank. In cross-examination he explained that he thought the title deeds were sent to the Bank because Madam Chia must have had an intention to have a further overdraft and that until then the title deeds were sent to the Bank for safe custody. Djeng, on the other hand, at the trial said the title deeds were sent to the Bank for safe custody and for the purpose of the future of Yo's company's account as Loke had told him that Yo had, a few weeks after November 1960, hinted to Loke that it was Yo's intention to ask for an overdraft because Yo intended to extend his business to Indonesia. Djeng said it was not possible that Madam Chia deposited the title deeds to cover her own overdraft as her shares were sufficient to cover that. There is thus a conflict between the evidence of Madam Chia, of Loke and of Djeng as to the purpose for which the title deeds were sent by Madam Chia's solicitors to the Bank.

On January 12, 1962, approximately four months after Madam Chia had signed "P1" (the Letter of Guarantee dated October 2, 1961) guaranteeing the Company's account to a limit of $100,000 and "P4" (the Confirmation of Deposit of Title Deeds dated October 2, 1961) which purported to confirm an equitable mortgage by way of deposit of title deeds relating to 28 Cuscaden Road as security for the payment of all moneys owing by the Company to the Bank, Madam Chia signed another Letter of Guarantee (hereinafter referred to as "P2") in Loke's office with Djeng also present and Loke signed as a witness. "P2" came into existence as Yo had told Loke that he had ordered machinery for which he could not pay and wanted to use trust receipts whereby the Bank would pay an inward bill and the Company would then take delivery in exchange for a trust receipt signed by the Company in favour of the Bank. Yo said that for this accommodation his wife, Madam Chia, would give the Bank another guarantee to cover what the Bank would pay. Although "P2" in effect constitutes a general guarantee by Madam Chia of her husband's Company's account to a limit of $200,000 and interest thereon, it is stated therein that the accommodation by the Bank is in consideration of a request by Madam Chia "to accept Trust Receipts ... on behalf of [the Company] for any sum or sums not exceeding Malayan dollars two hundred thousand only at any one time". Before "P2" was signed by Madam Chia, she had looked over it and Djeng had explained its contents to her in Mandarin and had told her it was a guarantee for money owing on trust receipts. Djeng had also explained to her what a trust receipt was.

Thereafter, for three years nothing eventful happened affecting the banker/customer relationship between the Bank and Madam Chia and between the Bank and the Company until January 27, 1965 when Madam Chia signed yet another Letter of Guarantee (hereinafter referred to as "P3") which guaranteed the Company's account to a limit of $600,000. The Company had by January 1965 overdrawn its account with the Bank by over $1,000,000 and Loke was requested by the Bank's manager to obtain a further guarantee of another $600,000 for the Company's overdraft. Yo on being asked for this further guarantee said he would ask his wife to furnish the guarantee and on January 27, 1965 he and his wife went to Loke and Djeng's office in the Bank. Madam Chia was shown the Company's outstanding overdraft and was told in Mandarin by Djeng in Loke's presence that if she did not sign the Bank would take legal action and make Yo a bankrupt and sell her shares. Madam Chia appeared surprised when she saw the amount of the Company's overdraft and at first appeared reluctant to agree to give the required guarantee. She was in the Bank for about 30 minutes.

On March 11, 1965 the Bank sent Madam Chia a letter informing her that the Bank was cancelling her own overdraft facilities and giving her two weeks' notice to pay off the sum of $1,424,768.64 being the debit balance on her overdraft account. On March 20, 1965 a similar letter was sent to the Company cancelling it's overdraft facilities and requesting payment of the sum of $1,095,625.19.

On April 1, 1965, Madam Chia and her husband jointly signed a letter on the Company's paper to the Bank assuring the Bank that they would make every effort to settle the Company's outstanding overdraft at the earliest possible date and informing the Bank that they were trying to sell a 26-acre piece of land and "some of our public shares" to settle the debt. The letter ended as follows: — "We wish to express our gratefulness to you again for the most generous and favourable terms for the overdraft facilities accorded us".

On April 14, 1965 Madam Chia wrote to the Bank informing the Bank that she was trying to dispose of her shares and her property to reduce her own overdraft.

The Bank took no other steps to enforce payment by her and by the Company and on August 11, 1965 Madam Chia and her husband sent another joint letter to the Bank requesting the Bank to permit the Company to use the overdraft facilities and "to reconsider the calling-up of the overdrafts which were granted to us against the security of our landed properties and public shares". The letter referred to recent offers made for their properties, $3,400,000 for 26½ acres at Thomson Rise and $600,000 for 28 Cuscaden Road and referred to these properties as "our securities".

Thereafter in correspondence passing between the Bank and Madam Chia and the Company, the Bank continually pressed for payment and Madam Chia and the Company continually requested more time to repay. Subsequently in May 1966 Messrs. Tann Wee Tiong & Co. corresponded with the Bank as solicitors for Madam Chia and the Company and in August 1966 accepted service of an Originating Summons, being O.S. 185 of 1966, instituted by the Bank against Madam

Chia. This summons asked *inter alia* for a declaration that the Bank, claiming to be an equitable mortgagee under a deposit of title deeds relating to 28 Cuscaden Road, be declared by an Order of Court to be a mortgagee of the said immovable property and for an Order for sale of the said property. Before the return date of the Originating Summons, Madam Chia and her husband changed their solicitors to Messrs. Lee & Lee. Mr. Selvadurai of Messrs. Lee & Lee was in charge and they informed him that she had a large overdraft account and the Company had also a large overdraft account with the Bank and that the Company's account was secured by a deposit of the title deeds to 28 Cuscaden Road and by her guarantees amounting in all to $900,000. They told Mr. Selvadurai that they did not dispute the Bank's claims but wanted time to reduce and finally settle the overdrafts. They instructed him to enquire whether the Bank would stay their hand for a while if they offered to pay monthly instalments of $10,000 as market conditions were then such that the properties, though valuable, would be sold cheaply if sold by the Bank. Mr. Selvadurai in their presence telephoned the Bank's solicitors but was told that the Bank would be unlikely to delay in view of the small monthly payment offered. Madam Chia and her husband then instructed Mr. Selvadurai to propose to the Bank to proceed first against the Thomson Rise property and the shares and if these proved insufficient the Bank could proceed to sell 28 Cuscaden Road as they wished to save their house.

Accordingly, Mr. Selvadurai, on behalf of Madam Chia wrote a letter dated August 24, 1966, the hearing of the Originating Summons having been postponed to September 5, 1966, in which he stated that he was instructed by Madam Chia that she had deposited with the Bank the title deeds relating to her property, 28 Cuscaden Road, to secure the Company's overdraft and requested the Bank to agree to proceed against her other property at Thomson Rise as the latter property would be sufficient to repay both her overdraft and the Company's overdraft. The next day another letter was sent to the Bank's solicitors offering also to pay monthly $10,000 towards reducing both overdrafts.

The Bank's solicitors received written instructions by a letter to them from the Bank dated September 2, 1966 a copy of which they sent to Messrs. Lee & Lee with their letter dated September 3, 1966. Mr. Selvadurai of Messrs. Lee & Lee replied on September 6, 1966 requesting the Bank to preserve the *status quo* with regard to 28 Cuscaden Road but the Bank rejected this proposal and eventually on September 12, 1966 Mr. Selvadurai consented to an Order of Court against Madam Chia declaring the Bank to be a mortgagee of the Cuscaden Road property and giving the Bank liberty to sell the property.

As one of the issues raised in this appeal is whether or not the agreement between Madam Chia and the Bank leading to the making of the said consent Order of Court was a concluded agreement it is necessary to set out the relevant correspondence between their respective solicitors on this issue. They are: —

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore. 24th August, 1966.

Dear Sirs,

Attention: Mr. H.M. Dyne

Re: Originating Summons No. 185 of 1966
Bank of China v. *Maria Chia Sook Lan*

We act for Madam Chia Sook Lan.

We refer to the above Originating Summons, the hearing of which was postponed to Monday, 5th September 1966, and to the conversation the writer has had with your Mr. Dyne about an alternative security that our client offers to furnish to cover the overdrafts involved.

We have waited till now in writing to you because we wanted to discuss this matter further with our client who has just returned from Kelantan.

We are instructed that the Dwidaya Trading Company's overdraft stands at approximately $1,218,009.49 plus further interest at the rate of 8% per annum from the 30th June 1966, and that our client's overdraft with the Bank stands at approximately $1,400,000.

We are further instructed that our client deposited with the Bank the Title Deeds relating to her property at No. 28 Cuscaden Road, Singapore to secure the said company's overdraft and the Title Deeds relating to her property at Thomson Rise together with numerous share certificates to secure her own overdrafts.

It appears that the Bank has sold and realised some of the shares to the extent of $600,000 and that the remaining shares would realise another $400,000 at least.

The Thomson Rise property, we are instructed, is worth about three million dollars.

As the property, the subject of your application herein, is our client's only house housing her family, our client would be obliged if the Bank would agree to proceed against our client's Thomson Rise property, which is sufficient to cover both overdrafts in place of the Cuscaden Road property.

Kindly let us have your client's reaction to the above proposals at your earliest.

Yours faithfully,
Sd:– LEE & LEE."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 25th August, 1966.

Dear Sirs,

Attention: Mr. H.M. Dyne

Re: Originating Summons No. 185 of 1966
Bank of China v. *Maria Chia Sook Lan*

We refer to our telephone conversation of this morning (H.M. Dyne — P. Selvadurai) and would confirm that our client also offers to repay the overdrafts herein by monthly instalments of $10,000 each with larger instalments should her financial position improve with the resumption of the imminent Indonesian trade.

Yours faithfully,
Sd: LEE & LEE."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 2nd September, 1966.

Dear Sirs,

Your Ref: HMD/MLC/B.39185
Re: Dwidaya Trading Company
O.S. No. 185 of 1966
Ourselves v. Maria Chia Sook Lan

With reference to your letter of the 31st August 1966 and copies of two letters from Messrs. Lee & Lee, we would accept the terms of settlement offered therein subject, however, on the following conditions:—

1. An Order of Court to be obtained giving us the liberty to sell No. 28 Cuscaden Road.
2. An Order of Court to be obtained giving us the liberty to sell Land at Thomson Rise (Lot 882 Mukim XVIII) by public auction as soon as such Order is obtained, and proceeds to satisfy both accounts, if sufficient.

3. The amount of the monthly instalments to be paid to us is to be decided after realisation of the above property at Thomson Rise and all the shares. We cannot agree to the monthly payment of $10,000 as interest payable on both overdrafts accounts amounts to more than $16,000 per month at present excluding accrued interest payable under Trust Receipts the unpaid bills under which totalling $231,429. Besides there is still an amount of $132,159.28 owing us under AB bills.

We will withhold selling No. 28 Cuscaden Road so long as the monthly instalments as determined by 3 above are regularly paid to us.

Yours faithfully,
for Bank of China
Singapore.
Signed:-
Sub-Manager."

"Messrs. Lee & Lee,
Singapore. 3rd September, 1966.

Dear Sirs,

Attention Mr. P. Selvadurai

Originating Summons No. 185 of 1966
Bank of China v. *Maria Chia Sook Lan*

We have now taken our clients' instructions with reference to your two letters dated 24th and 25th August respectively.

We enclose herewith a copy of a letter we have received from our clients, the contents of which we think you will find to be self-explanatory.

If your client agrees to these conditions laid down by the Bank it appears to us that the following steps be taken:-

1. Your client consents to the Bank being adjudged mortgagee of the property, the subject matter of the abovementioned Summons, and on taking out the Order which will *inter alia* give our clients the right of sale, for us to confirm that subject to compliance by your clients of the terms of monthly payments to be agreed, the Bank will not enforce the Order and sell the property.

2. For our clients to proceed by way of Originating Summons to apply to Court for leave to sell your client's property at Thomson Rise, and for your client to consent to the application which will be similar to the one referred to above.

We await hearing from you at your early convenience.

Yours faithfully,
Sd: Donaldson & Burkinshaw."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 6th September, 1966.

Attention: Mr. H.M. Dyne

Dear Sirs,

Re: Originating Summons No. 185 of 1966
Bank of China v. *Maria Chia Sook Lan*

We thank you for your letter with enclosure dated 3rd September, 1966.

Our client agrees to conditions 2 and 3 stated in your clients' letter to you dated 2nd September, 1966, as exhibited in your letter under reply.

But with regard to No. 28, Cuscaden Road, our client would be grateful if the *status quo* could be preserved as she is certain that the Thomson Rise property together with the shares would be more than sufficient to cover both overdrafts.

Our client feels that this arrangement should be satisfactory to your clients, as your clients already hold the title deeds to No. 28 Cuscaden Road anyway.

Yours faithfully,
Sd: LEE & LEE."

"Messrs. Lee & Lee,
Singapore. 9th September, 1966.

Dear Sirs,

re: Originating Summons No. 185/1966
Bank of China v. *Maria Chia Sook Lan*

We have now taken our clients' instructions with reference to the contents of your letter dated 6th September 1966, and are instructed to inform you that our clients adhere to the original terms and conditions more particularly set out in their letter of 2nd September 1966.

We must therefore inform you that at the hearing of the adjourned application on Monday, 12th September we shall ask for an Order of Court in terms of the said application.

You will no doubt bear in mind the ultimate paragraph of our clients' letter of 2nd September 1966 and advise your client accordingly.

Yours faithfully,
Sd: Donaldson & Burkinshaw."

c.c. Clients.

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 12th September, 1966.

Attention: Mr. H.M. Dyne

Dear Sirs,

re: Originating Summons No. 185/1966
Bank of China v. *Maria Chia Sook Lan*

We thank you for your letters dated 7th September, 1966 and 9th September, 1966 and would confirm that your clients will withhold selling the property at No. 28, Cuscaden Road so long as the monthly instalments, (to be decided after realisation of the land at Thomson Rise and all the shares) are regularly paid by our client.

Yours faithfully,
Sd: LEE & LEE."

On November 10, 1966 a Consent Order in Originating Summons No. 269 of 1966 was obtained by the Bank against Madam Chia declaring the Bank to be a mortgagee of her Thomson Rise property and giving the Bank liberty to sell the property. Following on this Order of Court the Bank put the Thomson Rise property for sale by auction but the auction was abortive as there were no offers approaching the reserve price put by the Bank. Thereafter the Bank made no more attempts to sell the Thomson Rise property under the power conferred on them by the Order of Court in O.S. 269 of 1966 and as no subsequent arrangements satisfactory to the Bank were made in respect of the Company's overdraft account and interest thereon the Bank commenced proceedings in the High Court against Madam Chia on October 6, 1967 claiming $900,000 and interest thereon in respect of the three Letters of Guarantee "P1" (for $100,000), "P2" (for $200,000) and "P3" (for $600,000) given by Madam Chia as security for the Company's overdraft on its current account with the Bank. On being served with the Writ, Madam Chia instructed yet another firm of solicitors to act for her, namely Messrs. Redrup & Co., and on her instructions Messrs. Redrup & Co. also commenced an action by her against the Bank in respect of No. 28 Cuscaden Road. These two actions intituled Suit No. 1809 of 1967 and Suit No. 1909 of 1967 respectively are the subject matters of the present appeals.

Madam Chia's pleadings in her action against the Bank are illuminating. Her claim as endorsed in her Writ in effect was for a declaration that "P4" (her written Confirmation of the deposit of the title deeds relating to No. 28 Cuscaden Road as security for any overdraft on the Company's account with the Bank) is voidable because of fraud. The claim was also to set aside the Order of Court in O.S. 185 of 1966. Her Statement of Claim alleged that the Bank had possession of the title deeds of her house in August 1961 as security for her personal overdraft account

with the Bank and that she was induced in the year 1961 to sign "P4" by her husband who exercised his will, dominion and influence over her as the result of threats, intimidation and/or undue influence by the Bank on him. The Statement of Claim further alleged that her husband obtained her signatures at the matrimonial home in the year 1961 to two printed documents containing blanks which she later in early 1966 discovered to be a guarantee by her to the Bank in the sum of $100,000 in the Company's account ("P1") and a Confirmation of deposit of title deeds relating to immovable property ("P4") to secure the Company's account with the Bank of all monies then owing or which should hereafter be owing to be dated October 2, 1961. She also alleged the Bank knew she had no independent advice and received no consideration with regard to the two documents she was induced by her husband to sign. Her Statement of Claim also alleged that she did not consent or authorise her then solicitors to consent to the Consent Order in O.S. 185 of 1966 and that the consent, if any, was given by her husband who acted under threats and intimidations and/or undue influence exercised by the Bank.

Four years later, on September 18, 1971, the Statement of Claim was amended. The allegation against her husband that he induced her to sign the written Confirmation of deposit of title deeds relating to 28 Cuscaden Road was abandoned and in its place it was alleged as an alternative plea that her husband knew the true nature of the written Confirmation of deposit of title deeds and the purpose for which her signature was required but through threats, intimidations and/or undue influence the Bank had procured her husband to exercise his will, dominion and influence over her to induce her to sign the said written Confirmation. A new allegation was added, namely, that Loke had represented to her husband that "P4" was a document her signature to which was required as a mere formality and Yo obtained her signature on that representation. Another new allegation was also added, namely, that the Bank or alternatively the Bank and her husband wrongfully concealed from her the true purpose for which they required her signature to the said written Confirmation and fraudulently misrepresented to her the true nature of the transaction. With regard to the Consent Order in O.S. 185 of 1966 she abandoned her allegation that the consent was given by her husband acting under threats, intimidations and undue influence on the part of the Bank.

About six months later, on March 28, 1972 the day after the trial commenced the Statement of Claim was further amended relating to the consent Order of Court setting up, *inter alia*, a plea that there was in fact no concluded agreement between her and the Bank by reason whereof her consent was wrongly given.

Finally, on the fourteenth day of the trial the Statement of Claim was still further amended to set up, *inter alia*, the following pleas: —

"12. Further, or in the alternative the said Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable property comprised therein which is void and unenforceable by the defendant Bank against the plaintiff for the following reasons, namely: —

(i) that by virtue of section 5 of the Registration of Deeds Ordinance (Chapter 255) it is not admissible in evidence in these proceedings, nor was it admissible in evidence in the proceedings in Originating Summons No. 185 of 1966 on the ground that it was not registered under that Ordinance;"

"13. Further, or in the alternative, if the said confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of $100,000 (Dollars one hundred thousand) with such interest thereon, if any, as may properly be found to be due".

We now turn to Madam Chia's pleadings in the Bank's action against her in respect of "P1" (Guarantee for $100,000), "P2" (Guarantee for $200,000) and "P3" (Guarantee for $600,000). In her Amended Defence, which was amended in September 1971 many months before the trial, she admitted liability in respect of "P1" and this claim is no longer in issue. It is to be observed that "P1" and "P4" (the Confirmation of deposit of title deeds of 28 Cuscaden Road) were signed by her in Loke's and Djeng's room at the same time on October 2, 1961. Her defence in respect of "P2" was that Loke falsely and fraudulently misrepresented to her that her signature was required to "a document in printed form containing Blanks therein and undated" for the purpose of substituting it for "P1" because "P1" was defective in form. She also pleaded that the Bank well knew she had no independent advice with regard to "P2" and received no consideration thereunder. In respect of "P3" her defence was that though she signed it, it was not signed by her on January 27, 1965, and she signed it under pressure, threats and intimidations exercised through Loke while her husband was absent from Singapore. She specifically alleged that the Bank compelled her to sign "P3" by threatening to sell her shares, deposited with the Bank to secure her own overdraft, if she refused to do so. There was also a plea by her that the Bank well knew she had no independent advice with regard to "P3" and received no consideration thereunder. In her Counterclaim she also alleges that the Bank procured her execution of "P3" by undue influence in that the [Bank] acting by its servant or servants threatened to sell her property, namely, stocks and shares held by the [Bank] as security for her own overdraft and to take steps to make her husband a bankrupt if she declined to do so and in that for a period of two to three hours the said servant or servants persistently demanded that [she] should execute the same".

It is convenient at this stage to summarise, as appears from Madam Chia's pleadings, the issues relevant for the purposes of these two appeals, which would have to be dealt with when the trial of these two actions commenced. They appear to us to be as follows: —

(1) Was "P4" when executed by Madam Chia a printed blank document.

(2) Did Loke represent to Madam Chia and her husband that her signature was required to "P4", a printed blank document, as a mere formality.

(3) Did the Bank through Loke procure Madam Chia's husband, who was aware of the true nature of "P4", by threats, intimidation and/or undue influence procure her husband to exercise

his will, dominion and influence over her in order to induce her to sign "P4".

(4) Did the Bank or alternatively the Bank and Madam Chia's husband wrongfully conceal from her the true purpose for which they required her signature to "P4" and did the Bank or alternatively the Bank and her husband fraudulently misrepresent to her the true nature of the transaction.

(5) Was there a concluded binding agreement between the parties which led to Madam Chia's solicitors consenting to the Order of Court in O.S. 185 of 1966. (This issue was raised by her counsel in his opening address on the second day of the trial).

(6) Did Madam Chia sign a document in printed form containing Blanks therein which was produced to her by Loke at her husband's office which the Bank says is "P2" which is dated January 12, 1962.

(7) Did Loke procure the execution of "P2" by Madam Chia by falsely and fraudulently misrepresenting to her that it was a mere formality required for the purpose of substituting it for "P1" which was defective in form.

(8) Did the Bank know that Madam Chia had no independent advice in regard to "P2" and received no consideration thereunder.

(9) Did the Bank through Loke obtain Madam Chia's signature to "P3" by exercising pressure, threats and intimidations on her.

(10) Did the Bank procure Madam Chia's execution of "P3" by undue influence in that the Bank acting through its servant or servants threatened to sell her stocks and shares held by the Bank as security for her own overdraft and to take steps to make her husband a bankrupt if she declined to do and in that for a period of two to three hours the Bank's said servant or servants persistently demanded that she should execute "P3".

These presently relevant issues are thus issues of fact mostly and raise, in respect of "P2", "P3" and "P4", the plea of undue influence and in respect of "P2" and "P4" the plea of *non est factum*. We have stated earlier that on the 14th day of the trial Madam Chia applied and was granted leave to still further amend her Statement of Claim in her action against the Bank. This final amendment raises, *inter alia*, a plea that "P4" constituted an equitable mortgage of the movable property comprised therein which is unenforceable upon the ground that by virtue of section 5 of the Registration of Deeds Ordinance "it is not admissible in evidence in these proceedings". To this plea an alternative defence was raised by the Bank that Madam Chia is estopped or in equity precluded from relying on the allegation that "P4" constituted an equitable mortgage of 28 Cuscaden Road and/or that it was inadmissible in evidence in these proceedings.

Having thus set out at some length the history of this litigation, the relevant pleadings and the relevant facts that, in our opinion, were found by the trial judge we turn to consider the arguments submitted by Mr. Le Quesne, counsel for Madam Chia in these two appeals. Before we do so, however, we think it necessary to observe that in his judgment the trial judge, except on one question whether Madam Chia's husband was present when "P3" was executed by her in January 1965, stated that wherever the testimony of Madam Chia and her husband differed or ran contrary to the evidence of the other witnesses at the trial he accepted the evidence of those witnesses. It is also necessary to observe that the trial judge in his judgment found those witnesses to be honest in all that they said and on more than one occasion stated that Madam Chia was not truthful or stated that he did not believe her. We would also observe that the trial judge found her to be a "shrewd woman with considerable business ability".

Having regard to the ten issues which we have just enumerated it is clear that they, and here we quote the language of Lord Morris in *Onassis & Anor.* v. *Vergottis*[1] "could really only be resolved by someone who over a period of many days had the advantage of hearing words spoken by persons who could constantly be observed". It is also clear that the issues which required to be decided were primarily questions of fact the determination of which depended almost entirely on the credibility of Madam Chia, of the officers of the Bank and of the solicitors who had acted from time to time for Madam Chia. We would observe also that in view of the gravity of the allegations made by Madam Chia against responsible officers of the Bank and against the solicitor acting for her on the Consent Order in O.S. 185 of 1966, allegations which were made in the face of contemporary documents and the probabilities, success on her part, apart from questions of law and the inferences to be drawn from primary facts, depended upon the trial judge accepting her as an honest, truthful and totally credible witness and rejecting the Bank officers and her solicitor as witnesses unworthy of credit.

We first set out Mr. Le Quesne's general submissions on the law relating to undue influence and *non est factum*:

"A. *On Undue Influence.*

1. A transaction procured by the exercise of undue influence can be set aside, whether it is a gift or a contract upon consideration.

2. If the parties to the transaction stand in a fiduciary relationship, undue influence is presumed and the burden is upon the party who relies on the transaction to show that the other party understood the transaction and entered into it freely and voluntarily and understood the nature and contents of the documents.

3. If the parties do not stand in a fiduciary relationship, there is in general no presumption of undue influence, and generally the burden is upon the party attacking the transaction to show that undue influence was exercised. However, even if the parties do not stand in a fiduciary relationship, the circumstances of the transaction may be such as to throw on the party who relies on the transaction the burden of justifying it.

4. Undue influence is some unfair and improper conduct or coercion from outside.

B. *On Non Est Factum.*

This plea is established if it is shown that:

(a) the document signed was fundamentally or essentially different, in substance or in kind, from what the signer

believed it to be (a mistake about the amount of the liability involved may make such a difference); and

(b) the signer signed it with the care to be expected of a normal person of prudence."

We now consider, first, Mr. Le Quesne's submissions on "P3", the $600,000 guarantee dated January 27, 1965 relied on by the Bank in its action against Madam Chia. It is submitted that "P3" is unenforceable because Madam Chia was induced to sign the guarantee by the exercise of undue influence. It is conceded that she cannot rely on any presumption and the burden lies on her to prove undue influence was in fact exercised on her but the submission is that the facts relating to this guarantee as found by the trial judge establish undue influence which consisted of (a) pressing her in her husband's absence to give a further guarantee of his account; (b) threatening that, if she did not give the guarantee, the Bank would sell her shares which the Bank held only as security for her overdraft and (c) threatening that, if she did not give the guarantee, the Bank would make her husband bankrupt because, although the Bank was entitled to make him bankrupt, the threat to do nevertheless constitutes undue influence. The case of *Williams* v. *Bayley*[2] is relied on. That was a case where a son carried to bankers of whom he, as well as his father, was a customer, certain promissory notes with his father's name upon them as endorser. The endorsements were forgeries by the son. The bankers insisted, without any direct threat of a prosecution, on a settlement to which the father was to be a party. He consented and executed an agreement to make an equitable mortgage of his property. It was held where a father appealed to, under such circumstances, takes upon himself a civil liability with the knowledge that, unless he does so, his son will be exposed to a criminal prosecution, with a moral certainty of conviction is not a free and voluntary agent and the agreement he makes under such circumstances is not enforceable in equity. Another case is relied on where a guarantee was obtained under an implied threat to prosecute a member of the family who was alleged to have forged the family company's signature to a previous guarantee. It was held that the guarantee was obtained by undue influence.

Mr. Le Quesne concedes that in these two cases the implied threat was a criminal prosecution but he submits that in principle it is impossible to say that in no case, other than a threat of prosecution, could an agreement be set aside because of undue influence. We do not propose to agree or disagree with this submission. In our opinion whether or not undue influence has been established such as to be sufficient in law for a transaction to be set aside as unenforceable must depend upon the facts and circumstances of the particular transaction under consideration. Suffice it for us to say that in our judgment on a consideration of all the facts and circumstances relating to "P3" the trial judge was entitled to and in our view, correct in finding that Madam Chia had failed to establish undue influence. We have not been persuaded that as an appellate tribunal having regard to the principles established in cases such as *Hontestroom (Owners)* v. *Sagaporack (Owners)*;[3] *Wat or Thomas* v. *Thomas*[4] and *Benmax* v. *Austin Motor Co. Ltd.*[5] we ought to interfere with the trial judge's finding.

Secondly, we turn to consider Mr. Le Quesne's submission on "P2", the $200,000 guarantee dated January 12, 1962. Here again, it is submitted that on the facts found by him the trial judge was wrong in not coming to the conclusion that there were undue influence rendering the guarantee unenforceable. The submission is that this transaction, together with "P4" the written Confirmation of the deposit of the title deeds of No. 28 Cuscaden Road, were part of a series of transactions between Madam Chia and the Bank for the benefit of her husband and ultimately for the benefit of the Bank; that the documents used were printed forms of the Bank in English of a technical kind which were executed by her at a time when she could not understand them because her English was very poor; that she and the Bank were not in an equal position because she was already the Bank's debtor on her own account and the Bank held her shares as security and that the ultimate result of this series of transactions was catastrophic for her in that she had made herself responsible for more than $1,500,000 on her husband's account and exposed her house, which was the family's house, to the risk of sale. It is further submitted that because of all these relevant circumstances, although there is no fiduciary relationship to give rise to the presumption of undue influence, the burden of justifying "P2" and "P4" is cast on the Bank which seeks to support these two transactions and on the facts the Bank has failed to prove that these two transactions were not carried through without undue influence by the Bank on Madam Chia.

We are unable to accept any of Mr. Le Quesne's submissions. There were in fact only three relevant transactions namely, the first one "P1", the $100,000 guarantee dated October 2, 1961, the second one "P4" also dated October 2, 1961 and the third and last one, "P2" was entered into three months later on January 12, 1962. The Bank was perfectly entitled and it seems to us it is normal prudent banking practice to require security before lending its money on overdrafts. The Bank and Madam Chia at the relevant times were in our opinion in an equal position in that she was not obliged to enter into "P2" or "P4" or for that matter "P1". The fact that she was then the Bank's debtor on her own overdraft account is not a relevant consideration as there is no evidence that the Bank had required further security from her, apart from her shares already deposited with the Bank, as a condition for continuing to allow her to operate on an overdraft. Finally, the fact that many years later her husband's overdraft account had swollen to $1,500,000 and thereby exposing her family house for sale is entirely irrelevant to the question whether or not the Bank had exercised undue influence in late 1961 or early 1962.

In our judgment the burden was on Madam Chia to establish undue influence on the part of the Bank in respect of "P2" and "P4" and the trial judge was entitled on the facts found by him to come to the conclusion that she had failed to establish undue influence.

Next we have to consider Mr. Le Quesne's submission on the plea of *"non est factum"*. This plea is raised in respect of "P2" and "P4", documents executed by Madam Chia on January 12, 1962 and

October 2, 1961 respectively. The case relied on by Mr. Le Quesne is the recent House of Lords' case of *Saunders* v. *Anglia Building Society*[6] which he submits establishes the principles governing the plea of *non est factum*. These principles we have set out in Mr. Le Quesne's general submissions on the law relating to *non est factum*.

Applying these principles to the facts relating to "P2" Mr. Le Quesne submits that Madam Chia is entitled to succeed. He relies on the evidence of Djeng which was accepted by the trial judge who in his judgment said: —

"I find that ['P2'] was a letter of guarantee in respect of trust receipts and that Mr. Djeng had explained its contents to [Madam Chia] who knew and understood what she was signing."

Djeng's evidence on "P2" reads as follows: —

"(Shown P2). I explained the contents to [Madam Chia]. I explained about the Trust Receipts according to the contents of this guarantee. I explained to [Madam Chia] what a trust receipt is. I remember that. This is a guarantee for money owing on trust receipts. I explained this to [Madam Chia]."

The submission is that Djeng's evidence clearly establishes that Madam Chia signed "P2" in the belief that "P2" was a guarantee by her of money owing by the Company to the Bank on trust receipts whereas "P2" was in fact a general guarantee of the Company's indebtedness to the Bank on the Company's account with the Bank. The submission also is that in signing "P2" Madam Chia did not act carelessly and acted as a normal person of prudence would in all the circumstances have acted and is therefore not precluded from relying on the plea of *non est factum*. It is accordingly submitted that the actual document ("P2") she signed was "fundamentally" or "essentially" or "basically" or "radically" or "entirely" different from the documents as she believed it to be. All these expressions appear in the speeches of the Law Lords in *Saunders* case, *supra*.

Saunders case also decides that it does not matter whether the difference is in kind or in substance so long as there is a 'fundamental" difference and whether or not there is a "fundamental" difference depends on all the circumstances of the transaction. Accepting the law to be, as we do, as stated in *Saunders* case the question that has to be asked and answered is whether or not, on all the circumstances leading up to its execution "P2" was so "fundamentally" or "essentially" or "basically" or "radically" or "entirely" different from the document as she believed it to be. In order to answer this question her own evidence must be considered. She said her husband telephoned to tell her that "P1" which she had signed at home was of no use and she had to sign another document in his office. So she signed "P2" which at the time of her signature was blank and undated and was not witnessed by Loke. The trial judge disbelieved her and accordingly her evidence on "P2" does not establish her plea of *non est factum*. So Mr. Le Quesne, as earlier stated, relies on Djeng's evidence. Having regard to her business acumen and ability and activities and the fact that she had about three months earlier signed "P1", a general guarantee of her husband's Company's overdraft account with the Bank and the findings of the trial judge, we are quite unable to find, assuming that the trial judge had failed to apply the principle established by *Saunders* case, that "P2" was "fundamentally" or "radically" or "entirely" different from the document as she believed it to be. It must be borne in mind that the burden of proving *non est factum* lies on her and on all the circumstances we are of the opinion that the trial judge's conclusion was correct and that she had failed to establish her plea of *non est factum* in respect of "P2".

Next, it is submitted that "P4" is void because of *"non est factum"* on the ground that the evidence of Loke and Djeng, the Bank's witnesses, establishes that Madam Chia was told before she executed "P4" that her liability on it was limited to $100,000 and the difference between a limited liability document and the actual amount on which her liability was unlimited brings "P4" within the principle established in *Saunders* case. We repeat that whether or not the plea of *non est factum* is established depends on all the circumstances. The circumstances must be the surrounding circumstances at the time of the execution of the document and no regard must be paid to the circumstances to be found years later. "P4" was a written Confirmation that the title deeds of 28 Cuscaden Road had been given to the Bank to secure the overdraft granted by the Bank to her husband's Company. The property was purchased by her on January 20, 1961 under a Conveyance of the same date. Her evidence that she bought it in 1959 was palpably untrue. The purchase price was $70,000 and there is no suggestion or evidence that the price she paid was well below the then market value of the property. "P4" came into existence about nine months later on October 2, 1961. There is no suggestion or evidence that property values in general or the value of the particular property had risen spectacularly or even at all during those nine months. In those circumstances it seems quite impossible for us to find that the document she signed *i.e.* "P4" was "fundamentally" or "essentially" or "radically" or "entirely" different from what she believed it to be at the time of its execution. No reliance is placed by Mr. Le Quesne on her evidence and we therefore ignore it. The requirement of the exercise of such care as to be expected of a normal person of prudence does not arise but if it did we would find that she was careless in that sense. On the facts all that emerged from her own evidence and that of her witnesses was that at the material time her English was poor and she could not communicate well or properly in English and could not understand well or properly when spoken to in English. It does not establish that she could not read simple English with understanding or in particular that she could not read with understanding "P4" so that she would not realise that her liability under it was not $100,000 but was unlimited. The burden was on her and on her own evidence she attended a Chinese school from the age of 8 and started to learn English at the age of 14 or 15. After leaving school at 16 she had English tuition for one or two years. All these facts coupled with her business experience do not point to a person who could not read in English with a sufficient degree of proficiency to understand the difference between providing security to a limit of $100,000 and

providing unlimited security. Her tutor in English while she was in Singapore was on her own evidence engaged to help her to be more proficient in speaking the English language.

Next, Mr. Le Quesne submits that the Consent Order made by the High Court on September 12, 1966 declaring the Bank to be a mortgagee of her Cuscaden Road property ought to be set aside on the ground that the agreement between Madam Chia and the Bank which led to the making of the Consent Order was in fact and in law not a concluded agreement. It is not in dispute that the court has jurisdiction to set aside a Consent Order upon any ground which would invalidate an agreement between the parties (see *Huddersfield Banking Co. Ltd.* v. *Henry Lister & Son Ltd.*[7]). Mr. Le Quesne submits that on the proper construction of the letters passing between Messrs. Donaldson & Burkinshaw, solicitors for the Bank and Messrs. Lee & Lee, solicitors for Madam Chia (see *supra*) there was no concluded agreement but merely an agreement to agree. His argument is that if one looks at the letter dated September 2, 1966 there was something of critical importance to be settled between the parties and that was the amount of the instalments to be paid by Madam Chia to the Bank. We do not accept this submission. In our judgment it is clear on a consideration of the correspondence between the solicitors for the Bank and for Madam Chia beginning with the letter of August 24, 1966 and ending with the letter of September 12, 1966, all of which we have earlier set out, that there was a concluded agreement, *inter alia*, that Madam Chia would consent to an Order of Court being made in terms of the Bank's application in O.S. 185 of 1966. From the correspondence and the facts leading up to the correspondence it is in our opinion clear that Madam Chia was prepared to consent to an Order of Court in respect of her Cuscaden Road property and to an Order of Court also in respect of her Thomson Rise property provided the Bank would agree to withhold selling her Cuscaden Road property until her Thomson Rise property and her shares held by the Bank were sold. This was agreed to by the Bank. It seems to us clear also from the correspondence that it was agreed the amount of the monthly instalments to be paid by her was to be decided after the sale of her Thomson Rise property and her shares and further that until agreement was reached as to the amount of the monthly instalments the Bank would not enforce its right to sell her Cuscaden Road property under the Order of Court which it sought to obtain in O.S. 185 of 1966. All that the correspondence amounted to in respect of the monthly instalments to be paid after realisation of the Thomson Rise property and the shares was a clear indication by the Bank that it considered a monthly payment of $10,000 to be unacceptable.

Although in the Petition of Appeal the finding of the trial judge that the said Order of Court was made with the knowledge and consent of Madam Chia is challenged, Mr. Le Quesne has not attempted to pursue this ground in his argument before us but in any event there is in our judgment clear and conclusive evidence to support the trial judge's finding.

Another ground of appeal depends on the true construction of section 4 of the Registration of Deeds Act (Cap. 281). We do not propose to deal with this ground in view of our decision that the Consent Order relating to 28 Cuscaden Road is valid and binding on Madam Chia except to say that it has been conceded, and rightly so, by counsel for the Bank that this court is bound by the decision in *Kasmeerah's*[8] case.

The question of estoppel, similarly, need not be considered by us and it remains for us to deal with the alternative general submission by Mr. Le Quesne that the trial judge was wrong in accepting the evidence of Loke and Djeng in that he gave inadequate consideration or overlooked matters of vital importance when weighing their evidence against the evidence of Madam Chia. We do not consider it necessary to deal in detail with the several matters relied on by Mr. Le Quesne and will merely content ourselves with saying that having regard to the observations we have earlier made based on the language of Lord Morris in the *Onassis* case, *supra* we are quite unable to say that the trial judge with all the advantages he had was plainly wrong and that we as an appellate tribunal could and would accept Madam Chia as a witness of truth and worthy of credit on all the material issues of fact canvassed by the pleadings and at the trial of these two actions. We would dismiss both appeals with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Donaldson & Burkinshaw.*